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The Secretary,  
Federal Maritime Commission,  
800 North Capitol Street, N.W.,  
Washington, D.C. 20573-0001.

January 13th. 2004.

Dear Mr. Secretary,

We are writing in strong support of the action by the National Customs Brokers and Forwarders Association of America petitioning the FMC to exempt NVOCCs from having to file tariff rates.

The undersigned has been actively and directly involved in management positions in the NVO industry since 1969, and has followed the progression of regulations very closely. I have had the privilege of serving as an expert witness on behalf of the F.M.C. in the early eighties against the 50 miles rule, and have been a strong proponent of regulations so long as they serve the interest of the shipping community. If there is one thing I have learned is that the NVO as been a powerful factor in reducing the cost of international maritime transportation. He has used his expertise and his purchasing power to attract large volumes of cargoes, with the indirect beneficial result of reducing, through competition, effective customer service and efficiency, the cost of ocean transportation for shippers and consignees.

There was a time when tariff filing had its use: It allowed shippers to be aware and make use of rates and fluctuations for Vessel Operators and NVO's alike. Through convenient and cheap "watching services", it was possible to know what rates were available for any particular commodity. and to compare from one carrier to another. Most importantly, the F.M.C. was, in my views, very involved in ensuring non discriminatory and non rebating practices by carriers and this could not have been done without published tariffs.

This requirement has become completely obsolete. For one thing, the allowance made for the Vessel Operators to sign confidential time volume and service contracts has, good or bad, allowed rate discrimination. Since carriers are allowed to sign these types of contracts, it is possible to "legally rebate" since, and it is a common practice, a carrier can sign, on the same trade lane and for the exact same commodity contracts with different parties at totally different rates. Even the volume is no longer an issue, and it is frequent that lower rates are granted on smaller volumes, depending on the type of shipper. In fact, a very large percentage of containerized cargo travels on these so called confidential contracts. either directly between shippers and Vessel Operators, or through OTI's. In practice, competitive pressures are such that there is very little confidentiality, and the forces of supply and demand have taken over, as they should. The fact of the matter is that tariff filing requirements have had very little or nothing to do with rate stability, non discrimination, or any of the important issues related to professionalism, financial

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responsibility, or more recently, security. Secondly, one of the most important purpose of the filing requirements in a tariff was to make the information available to the public. The fact is that the systems in use for the purpose of keeping track of these tariffs are such that, again in practice, it is almost impossible, and at the very best, extremely costly for the public to have real access to tariffs. Thirdly, one of the most important purposes of regulations as they address OTI's is that of their professional and financial responsibility. Filing rates again has absolutely nothing to do with it. Finally, and again this is my view, the FMC does not dispose of sufficient funds to have any real influence on the actual policing of the publishing of rates. When resources are much too scarce to effectively oversee compliance, any action becomes almost discriminatory. As a company who has a strict policy on complete compliance with the filing rules, we keep being exposed, time and time again, to a vast majority of carriers. VOCCs and NVOCCs alike, mostly foreign of course, who have no or very little regards for this regulation. We have come to the conclusion that we will simply do it right and not bother with those who don't, but we see very clearly that it serves no purpose whatsoever.

For all these reasons and more, I strongly believe that since the tariffs that are filed are extremely inaccessible, since the rates are filed by a small minority of players, since the resources to ensure proper publication and application of the rates and compliance with rate filing requirements are simply not sufficient, the whole thing seems to be an exercise in futility that only adds undue and considerable financial burden, a burden ultimately carried by the public.

In the event the Federal Maritime Commission decides to maintain the tariff filing requirements presently in effect, we believe the ability to enter into individual contracts with shippers should be extended to all NVOCCs. While the role of the NVOCC in his relationship with a Vessel Operator is that of a shipper, the Act clearly define that role as that of a carrier in his relationship with an exporter or importer. With that role as a carrier, the NVOCC should be allowed to fully compete with all other carriers, whether they own vessels or share space with other carriers on someone else's vessel. This is in the interest of the shipping industry and of the public. The most important issues concerning the professional, financial, and moral responsibilities of an NVOCC are addressed with regulations such as licensing, bonds, qualifying officers, etc... Filing rates in a tariff, or the ability to sign confidential contracts with a client are matters of pricing, therefore matters of business economics, and therefore have nothing to contribute to a safe, sound and responsible shipping community.

We oppose granting individual exemptions on an NVOCC-by-NVOCC basis such as UPS and C.H. Robinson, or such as Box Global have requested because that would encourage a flood of individual petitions that the FMC could not possibly process efficiently or economically. Furthermore, such an approach would create a totally unjustified discriminatory "classification" within the NVOCC industry. If the FMC chooses the regulated contracting alternatives, and again, short of totally eliminating rate filing altogether as we strongly recommend, we would support a rulemaking which establishes clear, simple and practical standards applicable to all NVOCCs.

We thank you most sincerely for your attention to this matter, and remain,

Respectfully yours,

Michel Fuchs  
President